

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

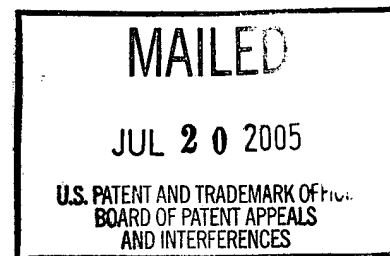
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PETER H. MARKUSCH and RALF GUETHER

Appeal No. 2005-1611
Application No. 09/808,812

ON BRIEF



Before KIMLIN, GARRIS and PAK, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal which involves claims 1-9.

The subject matter on appeal relates to a two-ply polyurethane geotextile composite in which a dimensionally stable geotextile is bonded to a pliable geotextile with a solidifiable liquid polyurethane composition. Further details of this appealed subject matter are set forth in representative independent claim 1 which reads as follows:

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1. A two-ply polyurethane geotextile composite in which a dimensionally stable geotextile is bonded to a pliable geotextile with a solidifiable liquid polyurethane composition which is a reaction product of a mixture comprising:

a) a liquid polyisocyanate having an isocyanate content of at least 10% by weight,

b) an isocyanate reactive component comprising a polyether polyol having from 2 to 6 hydroxyl groups and a number average molecular weight of from 250 to 8,000 and 0 to 10% by weight, based on total weight of b), of a low molecular weight diol or triol having an equivalent weight of from 31 to 99,

c) a urethane catalyst, and optionally,

d) a filler.

The references set forth below are relied upon by the examiner in the Section 102 and Section 103 rejections before us:

Lou et al. (Lou)	4,582,750	Apr. 15, 1986
Payne	4,872,784	Oct. 10, 1989
Gaspar et al. (Gaspar)	4,968,542	Nov. 6, 1990
Adam et al. (Adam)	5,421,677	Jun. 6, 1995
Sinclair	5,464,919	Nov. 7, 1995
Kausch et al. (Kausch)	5,674,565	Oct. 7, 1997

Claims 1, 2, 5 and 6 are rejected under 35 U.S.C. § 102(b) as being anticipated by Gaspar as evidenced by Sinclair and Kausch.

Claims 1-8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Payne in view of Adam or alternatively as being

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unpatentable over Adam in view of Payne, and claim 9 is correspondingly rejected over these references and further in view of Lou.

We refer to the brief and reply brief and to the answer (as well as to the February 24, 2003 Office action referred to on page 4 of the answer) for a thorough exposition of the viewpoints expressed by the appellants and by the examiner concerning these rejections.

OPINION

We cannot sustain any of these rejections.

Gaspar discloses a curable orthopedic support material comprising a flexible sheet material impregnated with a liquid resin system¹ which cures upon exposure to a curing agent into a resilient, semi-rigid support device. Because patentee's cured support device comprises multiple layers of sheet material having both rigid and flexible characteristics, the examiner considers this prior art device or composite to satisfy the claim 1 requirement wherein "a dimensionally stable geotextile is bonded to a pliable geotextile."

¹Sinclair and Kausch are relied upon by the examiner as evidence that Gaspar's liquid resin system satisfies the requirements of appealed claim 1.

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The appellants argue that Gasper's multiple layers cannot be both a dimensionally stable geotextile and a pliable geotextile since the layers are formed of the same sheet material. According to the examiner, this argument is unpersuasive. The examiner describes her position regarding this matter on page 4 of the answer as follows:

[T]he claims do not specify that the material used as a dimensionally stable material is different from the material used as a pliable geotextile. It is not the examiner's position that some of the materials in Gasper form into rigid geotextiles while others form into soft, pliable geotextiles. Rather, it is the examiner's position that the same material may function as both a dimensionally stable material and as a pliable material. In the broadest interpretation of the claims, multiple layers of the same material having both supportive and flexible characteristics would read on the appellant's [sic, appellants'] claim. Although the specification exemplifies different materials for each layer, the *claims* do not distinguish such a composite from one having multiple layers of material having both stable and flexible character.

It is well settled that, during examination proceedings, application claims are given their broadest reasonable interpretation consistent with the specification. In re Hyatt, 211 F.3d 367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000); In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

As correctly indicated by the examiner, appealed independent claim 1 does not specify that the dimensionally stable geotextile

and the pliable geotextile are made from different materials. Nevertheless, the ultimate issue is whether the examiner's broad interpretation of this claim (i.e., "multiple layers of the same material having both supportive and flexible characteristics would read on the appellant's [sic] claim"; answer, page 4) is reasonable and consistent with the appellants' specification. From our perspective, this interpretation cannot be accepted because it is not reasonable and consistent with the subject specification.

The specification for this application clearly reveals that the objectives of the appellants' invention are not satisfied by the mere presence of multiple layers of the same material. Indeed, pages 3 and 4 of the specification describe the inadequacies of prior art composites having multiple layers of the same material. According to the specification disclosure, the invention objectives are achieved by using two different types of geotextiles to thereby obtain the here claimed dimensionally stable geotextile and pliable geotextile (e.g., see the first full paragraph on page 6 and the paragraph bridging pages 6 and 7). Moreover, the dimensionally

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stable geotextile and the pliable geotextile are disclosed as having different physical properties (e.g., see Table 1 on specification page 18).

The examiner's interpretation is not reasonable and consistent with the above discussed specification disclosure. In Gasper's device or composite, each layer is formed of the same material and therefore possesses the same properties. Such a composite corresponds to the prior art composites described on specification page 4 as having short-comings which the appellants' composite was designed to avoid. Viewed from this perspective, the claim interpretation urged by the examiner actually conflicts with the subject specification.

For the above stated reasons, we cannot sustain the examiner's Section 102 rejection of claims 1, 2, 5 and 6 as being anticipated by Gasper.

The other rejections advanced on this appeal are all premised on the examiner's position that the appealed claim 1 requirement wherein "a dimensionally stable geotextile is bonded to a pliable geotextile" is satisfied by Payne's disclosure of using two blankets for making a liner or composite.

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As with Gasper, Payne has no disclosure that the two layers of his composite have different properties or are made from different materials. Thus, the pivotal issue raised by these Section 103 rejections, like the issue raised by the above discussed Section 102 rejection, is whether the examiner has properly interpreted appealed claim 1 as broadly encompassing an embodiment wherein the dimensionally stable geotextile and the pliable geotextile are both made from the same material and possess the same properties.

For the reasons previously detailed, this claim interpretation is not reasonable and consistent with the appellants' specification. It follows that we also cannot sustain the Section 103 rejections of claims 1-8 based on the Payne and Adam references and of claim 9 based on these references and further in view of Lou.

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The decision of the examiner is reversed.

REVERSED



EDWARD C. KIMLIN)
Administrative Patent Judge)



BRADLEY R. GARRISS)
Administrative Patent Judge)

BOARD OF PATENT

APPEALS AND



CHUNG K. PAK)
Administrative Patent Judge)

INTERFERENCES

BRG:hh

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BAYER MATERIAL SCIENCE, LLC
100 BAYER ROAD
PITTSBURGH, PA 15205